

Date: July 22, 2003
Proposed by: BOLA
Prepared by: Marissa L. Santiago

Analysis of Proposed UI Law Change Late Appeals Provision

1. Description of the Proposed Change:

Modify §108.09(4)(c), the late appeals statute, to clarify that after reviewing the party's written reasons for filing an appeal late, an administrative law judge may hold a hearing on whether those reasons were beyond the party's control. To decide whether to hold a hearing, the administrative law judge will construe the reasons for filing an appeal late as true and in favor of the party bringing the appeal.

2. Proposed Statutory Language:

§108.09(4)(c): *Late appeal.* If a party files an appeal which is not timely, a department administrative law judge shall review the appellant's written reasons for the late appeal. If those reasons, when taken as true and construed most favorably to the appellant, fail to constitute a reason beyond the appellant's control, the administrative law judge may dismiss the appeal without a hearing and issue a decision accordingly. Otherwise, the department may schedule a hearing concerning the issues of on the question of whether the party's failure to timely file the appeal was late for a reason beyond the party's appellant's control. The department may also provisionally schedule a hearing concerning any matter in the determination being appealed. If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file the appeal was not for a reason beyond the party's control, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file an appeal was for a reason beyond the party's control, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. The same or another appeal tribunal established by the department for this purpose shall then issue a decision under sub. (3)(b) after conducting a hearing concerning any matter in the determination. After hearing testimony on the late appeal question, the administrative law judge shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether the appellant's appeal was late for a reason beyond the appellant's control and which, in accordance with those findings and conclusions, either dismisses the appeal or rules that the appeal was late for a reason beyond the appellant's control. If the appeal is not dismissed, the same or another administrative law judge, after conducting a hearing, shall then issue a decision under sub. (3)(b) concerning any matter in the determination.

3. Proposer's Reason for the Change:

The present late appeals statute, §108.04(c), is unclear about what the department may do if it decides not to hold a hearing. The statute states that the administrative law judge, *after hearing testimony*, may issue a decision as to whether the appeal was late. However, it is silent on what will happen if there is no hearing. This creates an implication that the appellant will always receive a hearing after submitting a form explaining why the appeal was late.

The corresponding administrative code does not resolve this ambiguity. The first part of the code relating to late appeals, DWD 140.04(1), merely restates the first two lines of §108.09(4)(c) and describes that the department *may* hold a hearing on whether the appeal is late. The second part, DWD 140.04(2), states:

The administrative law judge shall issue a decision which makes ultimate findings of fact and conclusions of law as to whether or not the appellant's late appeal was for a reason beyond the appellant's control. If the administrative law judge decides this question in favor of the appellant, the same or another administrative law judge shall then make the ultimate findings of fact and conclusions of law on the merits of the case. If the administrative law judge decides that the late appeal was late for a reason within the appellant's control, the administrative law judge shall dismiss the appeal.

The rule does not indicate whether the administrative law judge makes "findings of fact and conclusions of law" in all cases, or only in those in which he or she decides to hold a hearing. In addition, the rule seems to imply that the "findings of fact and conclusions of law" indicate that there will be a fact-finding process or hearing.

If the current language is not modified, an appellant could file a due process claim against the department if he or she does not receive a hearing. Based on the current language, the appellant could assume that he or she will always receive a hearing. The appellant does not know what actions will be taken if there is no hearing nor does he or she know what the basis is for not having one.

5. Effects of the Proposed Change:

a. Policy: This change will clarify policy with respect to claimants and employers filing late appeals. They will understand that they may or may not have a hearing based on the reasons they provided for having filed the appeal late.

b. Administrative Impact: Clarifying the statute will increase efficiency with respect to late appeals and allow the department to deal with late appeals in a specified way. It will also eliminate the uncertainty created by the current statute.

c. Equitable: This proposal will not change the outcome of a late appeals case. However, it will ensure that no claimant or employer's interests are harmed because it clarifies when they will or will not have a hearing on why the appeal was late.

d. Fiscal: No significant fiscal effect.

6. State and Federal Issues:

Modifying §108.09(4)(c) will not change any other current provisions of Chapter 108 or administrative rules. It will clarify DWD 140.04 with respect to what the department may do if it decides not to schedule a hearing.

There are no conformity issues or other federal issues.

7. Proposed Effective/Applicability Date:

This change shall first apply to initial determinations issued on or after Jan. 1, 2004.

February 2003
Prepared by Nadine Konrath

ANALYSIS OF PROPOSED UI LAW CHANGE

EXTEND DURATION OF LEVY

INTRODUCTION

Levy by definition means to impose or collect. Wisconsin Statutes defines levy as "all powers of distraint and seizure." Basically a levy is to hold the property in the hands of a third party of a debtor to repay a debt.

The UI Division uses a levy if a debtor ignores or fails to pay employer taxes or overpaid benefits. The purpose of a levy is to seize any property of the debtor in the hands of a third party. The property to be recovered may be all real and personal property, including but not limited to wages, salary, commission, and bonus or otherwise, bank accounts, rents, Insurance proceeds, contract payments and retirement accounts.

A levy can be a single action against the debtor, continuous until the debt is paid in full, or an action based on time limits. If the levy is based on an installment agreement and exceeds on year in length, the levy must be renewed. If the debt is not paid within one year a new levy and notice must be issued. Additional costs are incurred with each action of the levy and passed to the debtor.

DESCRIPTION OF PROPOSED CHANGE

Section 108.225(15), states "A levy is effective from the date on which the levy is first served on the third party until the liability out of which the levy arose is satisfied, until the levy is released or until one year from the date of service, whichever comes first."

The change would permit the levy to continue until it is paid in full and not limit the duration of the levy to one year from the date of service.

PROPOSED STATUTORY LANGUAGE

Section 108.225(15), states "A levy is effective from the date on which the levy is first served on the third party until the liability out of which the levy arose is satisfied, or until the levy is released ~~or until one year from the date of service~~, whichever comes first."

REASONS FOR THE CHANGE

Eliminates: Costs
 Paperwork
 Confusion
 Fearful Debtors

Levies that can extend beyond one year are most commonly levies on wages. Currently they require additional work, additional costs are incurred and confusion is caused when the levy has to be renewed.

Third parties are confused when a new levy is issued which in turn produces telephone calls to staff. Debtors are fearful additional wages will be attached because of the action. Many already believe that if the levy was not released, it continues until the levy is paid in full.

Consistent with other levy statutes:

- ✓ 71.91 (5m)(b) Department of Revenue
- ✓ 49.195(3n)(b) Department of Workforce Development, Recovery of AFDC and W2
- ✓ 49.854(4) Department of Workforce Development, Liens against property for delinquent support payments.

Consistent with IRS levy process.

BRIEF HISTORY AND BACKGROUND OF CURRENT PROVISION:

Current law was enacted in approximately 1989 and simplified collection procedures for collecting delinquent debt and benefit overpayments. This administrative process replaced repeated garnishment attempts. The levy procedure allowed collection for a period of one year, until released or until the debt was paid in full, whichever occurred first.

If the debt was not paid in full year in one year, notice of levy and service of levy is reissued.

EFFECT OF THE PROPOSE CHANGE:

Administrative Impact:

- 1) Employers:
Employers would have no additional work. Decreases paperwork to employers. Decreases confusion.
- 2) Claimants:
Decreases paperwork to claimants. Decreases costs to service levy.
- 3) Third Parties:
Decreases paperwork to third parties. Decreases confusion.

UI Division

Decreases paperwork for collection staff.
No impact on other staff.
Staff could redirect efforts to new liability outstanding.
Consistent with strategic plan.
No administrative costs to the division will be incurred.
Better customer service.
Accurate assessment of levies issues.

Equitable: There is no additional cost to the employers or employees.
There is no gain to claimants.

Fiscal: No impact on the reserve fund.

STATE AND FEDERAL ISSUES

Chapter 108: No other provisions will be affected as a result of this change.

Rules: No administrative rules are necessary or changes to administrative rules.

Conformity: No conformity issues arise from this change.

PROPOSED EFFECTIVE/APPLICABILITY DATE:

Normal effective date: All levies issued after effective date would be continuous.

ANALYSIS OF PROPOSED LAW CHANGE

1. DESCRIPTION OF PROPOSED CHANGE

The proposed change would make imposter overpayments and penalties established under §§108.04(11)(cm) and 108.095, Stats., collectible under the benefit overpayment warrant statute, §108.22(8)(b), and the levy statute, §108.225. The change would also increase the chances that the penalty assessed against an imposter would not be dischargeable in certain types of bankruptcy proceedings.

2. PROPOSED STATUTORY LANGUAGE

A. Section 108.04(11)(cm), Stats., would be amended as follows:

Any person who makes a false statement or representation in order to obtain benefits in the name of another person may, by a determination or decision issued under s. 108.09(5), be required to repay the amount of the benefits obtained, which benefits constitute a benefit overpayment, and be assessed an administrative assessment penalty in an additional amount equal to not more than 50 percent of benefits obtained.

B. Section 108.22(8)(a), Stats., would be amended as follows:

If benefits are erroneously paid to an individual, the individual's liability to reimburse the fund for the overpayment may be set forth in a determination or decision issued under ss. 108.09 or 108.09(5). Any determination which establishes or increases an overpayment shall include a finding concerning whether waiver of benefit recovery is required under par. (c). If any decision of an appeal tribunal, the commission or any court establishes or increases an overpayment and the decision does not include a finding concerning whether waiver of benefit recovery is required under par. (c), the tribunal, commission or court shall remand the issue to the department for a determination.

C. Section 108.22(8)(b), Stats., is amended to read as follows:

To recover any overpayment which is not otherwise repaid or recovery of which has not been waived, and/or any penalty assessed under s. 108.04(11)(cm), the department may offset the amount of the overpayment and/or penalty against benefits the individual would otherwise be eligible to receive or file a warrant against the liable individual in the same manner as provided in this section for collecting delinquent payments from employers, or both, but only to the extent of recovering the amount of the overpayment and any costs and disbursements without interest.

D. Section 108.22(8)(c)2, Stats., is amended as follows:

If a determination or decision issued under ss. 108.09 or 108.09(5) is amended, modified or reversed by an appeal tribunal, the commission or any court, that action shall not be treated as establishing a departmental error for purposes of subd. 1.a.

E. Section 108.225(1)(b), Stats., is to be amended as follows:

Debt means a delinquent contribution, benefit overpayment, administrative penalty assessed under s. 108.04(11)(cm), or any liability of a third party for failure to surrender to the department property or rights to property subject to a levy after proceedings under (4)(b) and s. 108.10 to determine that liability.

3. PROPOSER'S REASON FOR THE STATUTORY AMENDMENTS

The wording of the current statutes allows the department to in effect set up an overpayment against an imposter who uses the identity of another to collect unemployment insurance benefits and provides an administrative penalty for such an imposter. However, the present statutory wording does not provide any means of collecting either the overpayment or the administrative penalty from the imposter.

4. BRIEF HISTORY AND BACKGROUND OF THE CURRENT PROVISIONS

The imposter provisions were added to the UI law by 1999 Act 15. They require that an imposter is to repay the benefits obtained as a result of the imposter's false representations and also create an administrative penalty. However, no specific collection authority was provided in those changes. In seeking to deal with the imposter issue, department personnel realized there were no means of collecting the imposter overpayments or administrative penalties.

5. EFFECT OF THE PROPOSED CHANGES

A. Policy

Enactment of the original imposter provision in §108.04(11)(cm) and §108.09(5) reflected a policy that imposters who used the name and social security number of another to obtain unemployment insurance benefits should be required to repay the benefits and be penalized otherwise. Unfortunately, for whatever reason, nothing was done to facilitate collection of the overpaid benefits and of the administrative penalty. The proposed changes add normal collection procedures to permit the department to collect the overpaid benefits and the administrative penalties, which was the original intent of the imposter law.

B. Administrative Feasibility

These changes should be quite easily implemented because there is no real change in collection procedure, but only the application of present collection procedure to the imposter overpayments and penalties. Also, there are only four or five cases involving imposters in a calendar year.

C. Equitable

By allowing the normal collection procedure to be used to collect imposter overpayments, the department will be able to pursue repayment of the overpaid benefits and the penalty against imposters through the normal collection tools. Imposters are in effect identity thieves, and the department certainly wants to have effective collection methods for dealing with their actions. Under present law, an overpaid claimant who is not dishonest with the department, but merely was overpaid, is subject to the full range of collection procedures available under the Unemployment Insurance Law, but an imposter who has misrepresented key facts to the department is not subject to such collection.

6. FISCAL IMPACT

The fiscal impact should be negligible given that there are very few imposter cases in a calendar year, and there should be a minimal additional burden upon collection personnel.

7. STATE AND FEDERAL ISSUES

There are no state and federal issues that we are aware of at present.

8. PROPOSED EFFECT/APPLICABILITY DATE

The first Sunday after publication.

TODAY

DNSTE

2003

2001-2002 LEGISLATURE

3/21/01

LRB-3082/T

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wanted by wed 8/27

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2001 ASSEMBLY BILL 553

October 10, 2001 - Introduced by Representatives HUNDERTMARK and TURNER, cosponsored by Senators HANSEN and A. LASEE. Referred to Committee on Labor and Workforce Development.

(regenerate)

1 AN ACT ~~to renumber~~ 108.02 (12m) (c) and (d); ~~to renumber and amend~~ 108.02
2 (12m) (intro.), 108.02 (12m) (a) and (b), 108.02 (12m) (e) and 108.09 (3) (a); ~~to~~
3 ~~amend~~ 20.445 (1) (gh) (title), 20.445 (1) (nb) (title), 49.45 (10), 108.02 (10m),
4 108.02 (13) (a), 108.02 (15) (f) (intro.), 108.02 (15) (g) (intro.), 108.02 (15) (j) 4.
5 and 5., 108.02 (15) (k) 18. c., 108.02 (15) (k) 19. b., 108.02 (15) (n), 108.02 (22m),
6 108.04 (2) (a) 3., 108.04 (7) (h), 108.04 (8) (c), 108.04 (13) (d) 4. (intro.), 108.04
7 (16) (b), 108.04 (17) (b), 108.04 (17) (e), 108.04 (17) (h), 108.05 (1) (L) (intro.),
8 108.05 (7) (a) 1., 108.05 (7) (f) 1., 108.065 (1), 108.16 (6) (g), 108.16 (6m) (a),
9 108.16 (8) (b) (intro.), 108.16 (8) (b) 2., 108.16 (8) (b) 3., 108.16 (8) (c) 3., 108.16
10 (8) (e) 3., 108.16 (8) (f), 108.17 (2), 108.19 (1e) (a) and (d), 108.19 (1m), 108.20
11 (3), 108.22 (1) (am), 108.22 (1) (b), 108.22 (1) (e), 108.22 (1m), 108.225 (1) (a) to
12 (c) and 108.225 (16) (intro.); and ~~to create~~ 108.02 (15) (gm), 108.02 (15) (j) 6.,
13 108.02 (15) (k) 20., 108.02 (17m), 108.02 (20g), 108.02 (21c), 108.02 (21e), 108.02
14 (23g), 108.02 (29), 108.05 (1) (m) and (n), 108.065 (1m), 108.067, 108.09 (3) (a)

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1 2., 108.14 (2e), 108.14 (19), 108.141 (7) (c), 108.152, 108.16 (8) (c) 4., 108.16 (8)
2 (e) 4., 108.16 (8) (L), 108.17 (2c), 108.17 (2g), 108.22 (1) (ad) and 230.12 (1) (g)
3 of the statutes; **relating to:** various changes in the unemployment insurance
4 law, ~~appointment of temporary reserve appeal tribunals, requiring the exercise~~
5 ~~of rule-making authority, and making an appropriation.~~

Analysis by the Legislative Reference Bureau

This bill makes various changes in the unemployment insurance law. Significant provisions include:

BENEFIT RATE CHANGES

Currently, weekly unemployment insurance benefit rates for total unemployment range from \$46 for an employee who earns wages (or certain other amounts treated as wages) of at least \$1,150 during at least one quarter of the employee's base period (period preceding a claim during which benefit rights accrue) to \$313 for an employee who earns wages (or certain other amounts treated as wages) of at least \$7,825 during any such quarter. This bill adjusts weekly benefit rates for weeks of unemployment beginning on or after December 30, 2001, and before December 29, 2002, to rates ranging from \$48 for an employee who earns wages (or certain other amounts treated as wages) of at least \$1,200 during at least one quarter of the employee's base period to \$324 for an employee who earns wages (or certain other amounts treated as wages) of at least \$8,100 during any such quarter; and beginning on or after December 29, 2002, to rates ranging from \$49 for an employee who earns wages (or certain other amounts treated as wages) of at least \$1,225 during at least one quarter of the employee's base period to \$329 for an employee who earns wages (or certain other amounts treated as wages) of at least \$8,225 during any such quarter.

OTHER BENEFIT CHANGES***Offset of social security benefits***

Currently, with certain exceptions, if benefits are payable to a claimant for any week for which the claimant receives a pension payment from a governmental or other retirement system (including the social security system) maintained or contributed to by an employer for which the claimant worked during his or her base period (recent work period during which benefit rights accrue), the benefits received by the claimant for each week are reduced by the amount of the pension payment received for that week, except that if the payment is received under the Social Security Act the benefits received by the claimant for each week are reduced by 50% of the gross amount of the social security payment received for that week. This bill provides that, beginning with the first full week of 2003, all payments received by a claimant under the Social Security Act are not included in determining the amount of any required unemployment insurance benefit reduction.

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The bill also provides that for all weeks beginning in 2002 the benefits received by a claimant for each week in which the claimant receives a payment under the Social Security Act are reduced by only 25% of the gross amount of the social security payment received by the claimant for that week.

Search for work

Currently, during the 104-week period that began on January 2, 2000, in order to receive benefits for a week in which a claimant earns no wages, the claimant must conduct a reasonable search for suitable work during that week, unless otherwise permitted by the department of workforce development (DWD) by rule. The search must include at least two actions each week that constitute a reasonable search as prescribed by DWD by rule. After this period, a claimant must simply seek suitable work in order to remain eligible for benefits, but there are no specific statutory requirements concerning what constitutes a reasonable search. This bill extends this period during which the specific statutory requirements apply to 156 weeks, and also directs DWD, by rule, to require claimants to conduct a reasonable search for work after this 156-week period, and to prescribe, by rule, standards for the search to be considered reasonable.

Requalification for employees receiving certain training

Currently, with certain exceptions, if an employee is unable to work or unavailable for work, has not registered for work, or is not seeking suitable work, the employee's benefits are reduced or the employee is ineligible to receive benefits. Also currently with certain exceptions, if an employee fails, without good cause, to accept suitable work when offered or to return to work when recalled by his or her employer, the employee is ineligible to receive benefits for the next 4 full weeks and until the employee requalifies by earning a specified amount of wages in certain employment. One exception permits an employee to receive benefits without requalifying if the employee enrolls in or leaves work to participate in training approved under the federal Trade Readjustment Act. This bill also permits an employee to receive benefits without requalifying if the employee enrolls in or leaves work to participate in training under a state plan approved under the federal Workforce Investment Act. The cost of benefits paid to an employee under the current exception is generally charged to the employer or employers that employed the employee during his or her base period. Under this bill, the cost of benefits resulting from the current exception and the proposed exception is charged to the balancing account of the unemployment reserve fund, which is financed from contributions (taxes) of all employers that are subject to a requirement to pay contributions, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

Charging of certain benefits paid after recall

Currently, if an employee fails, without good cause, to return to work with a former employer that recalls the employee within 52 weeks after the employee last worked for the employer, the employee is ineligible to receive benefits for the next 4 full weeks and until the employee requalifies by earning a specified amount of wages in certain employment. Currently, the cost of benefits paid to an employee who fails without good cause, to return to work with an employer after the employee

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requalifies is generally charged to the employer or employers that employed the employee during his or her base period. Under this bill, the cost of benefits that would otherwise be chargeable to the recalling employer is charged to the balancing account of the unemployment reserve fund, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

Rule making

The bill directs DWD to submit proposed rule changes to the legislative council staff no later than the first day of the 11th month beginning after the day the bill becomes law to:

1. Decrease the number of hours per week that a claimant must remain available for work in order to receive benefits from 35 to 32.
2. Establish a specified level of repeated absenteeism or repeated tardiness that will permit an employer to terminate an employee without being required to pay the cost of any benefits for which the employee may qualify resulting from the base period applicable to the date of termination, and that will preclude the employee from receiving benefits without requalifying by working for a specified period and receiving a specified amount. (Currently, the degree of absenteeism or tardiness that permits such action varies depending upon the facts of each case.)
3. Specify, in accordance with applicable administrative and judicial interpretations, what constitutes an "establishment" for purposes of a current disqualification from receipt of benefits because of a labor dispute in the establishment in which an employee is or was employed.

The bill also directs DWD to promulgate an emergency rule no later than the 90th day after the bill becomes law to extend the current deadline for filing an initial claim for benefits from the end of the initial week for which benefits are payable to the end of the following week. Currently, emergency rules are generally effective for no more than 150 days. Under the bill, this emergency rule is effective until the first day of the 11th month after the day on which the bill becomes law or the day on which a permanent rule relating to this subject matter becomes effective, whichever is sooner, and no finding of emergency is required to promulgate the emergency rule.

TAX CHANGES***Claimant eligibility reviews***

This bill directs DWD to conduct reviews of claimants for unemployment insurance benefits in the 2001-03 fiscal biennium to verify adherence to work search requirements and other conditions of eligibility.

Deferral of first quarter contribution liability

Currently, if an employer is liable for the payment of contributions (taxes), the employer must make regular payments for the periods specified by DWD. This bill codifies the existing requirement that these payments be made on a quarterly basis. The bill also permits an employer that has a first quarter contribution liability of at least \$5,000 and that is not delinquent in making its contribution payments or in paying any interest, penalties or fees assessed against the employer for unemployment insurance purposes to defer payment of up to 60% of the contribution

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liability of the employer for the first quarter of the year in which the liability accrues (normally payable by April 30) without payment of interest, if the employer pays at least 30% of that liability by the following July 31, an additional 20% of that liability by the following October 31 and any remaining liability by the following January 31. Under the bill, if an employer fails to make a deferred payment of contribution liability when due, the employer must pay interest on all contribution liability for the calendar year in which the liability accrues retroactive to April 30 of that year.

Special assessments for information technology systems

Currently, each employer that is subject to a contribution requirement must pay an annual special assessment for each year prior to 2002 in an amount that may not exceed the lesser of 0.01% of the employer's annual taxable payroll for unemployment insurance purposes or the employer's solvency contribution for that year for the purpose of financing the renovation and modernization of the unemployment insurance tax and accounting system. DWD must reduce the solvency rate that an employer must pay in each year prior to 2002 by the special assessment rate applicable to that employer for that year. (The solvency rate is the portion of an employer's contribution rate that is used to maintain the solvency of the unemployment reserve fund.) This bill makes the special assessment requirement and solvency rate offset applicable to calendar years 2002 and 2003. The bill also permits DWD to use the revenue generated by the assessments for the design, or development of, unemployment insurance information technology systems generally, including the tax and accounting system.

OTHER CHANGES***Coverage of and financing of benefits by Indian tribes and tribal units***

Currently, the unemployment insurance law of this state applies to Indian tribes so that the tribes or units are generally subject to the requirement to pay contributions (taxes) to this state on services performed for them and employees of the tribes are potentially eligible to claim benefits. However, under federal law, tribes that are recognized by the federal government are not generally subject to the jurisdiction of this state except as federal law permits or requires. On December 20, 2000, the federal government required this state to make Indian tribes subject to the unemployment insurance law of this state and to pay benefits to employees of the tribes to the same extent as other employers and employees generally.

This bill specifically applies the unemployment insurance law of this state to Indian tribes and their employees. However, in accordance with federal requirements, the bill accords Indian tribes, tribal units, or combinations of tribal units the privilege of financing the payment of benefits to their employees on a reimbursement basis after benefits are claimed in lieu of payment of regular contributions as is generally required of most other employers. The bill also prescribes procedures for and restrictions on the election of reimbursement financing by Indian tribes, tribal units, and combinations of tribal units.

Coverage of certain services provided to medical assistance recipients

Currently, under the medical assistance (MA) program administered by the department of health and family services (DHFS), this state provides assistance to

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finance certain health care costs of needy individuals. Private-duty nursing service or part-time intermittent care provided to an MA recipient by an individual who is certified by DHFS as a nurse in independent practice or an independent nurse practitioner and respiratory care service provided to an MA recipient by an individual who is certified by DHFS as a provider of respiratory care services in independent practice are generally subject to contribution requirements (taxation) under the state unemployment insurance law and the individuals who perform these services are potentially eligible to claim benefits. This bill eliminates coverage of these services under the state unemployment insurance law if they are provided by an individual who is not an employee of a home health agency (an organization licensed by DHFS that provides skilled nursing and other therapeutic services). Under the bill, the recipients of these services are no longer subject to contribution requirements and claimants are no longer eligible to claim benefits based on the performance of these services.

Coverage of certain nonresident aliens

Currently, the services of nonresident aliens who are lawfully admitted to the United States for certain purposes, as well as the services of their spouses and minor children who are admitted for the same purposes, are subject to contribution requirements (taxes) under the state unemployment insurance law, but the employees who perform these services are generally not eligible to claim benefits. This bill eliminates coverage of services performed by certain kinds of nonresident aliens who are lawfully admitted to the United States under certain specified visas, thereby eliminating contribution requirements for services performed by these individuals. The change does not affect coverage of services performed by spouses or minor children of these aliens if the spouses or children are not admitted to the United States for the same purposes as their spouses or parents. The change applies retroactively to January 1, 1999.

Contribution report format

Currently, each employer that is subject to the unemployment insurance law must file with DWD periodic reports of contributions (taxes). This bill provides that, if an employer retains an agent to file contribution reports and the agent files contribution reports on behalf of 25 or more employers, the agent must file the contribution reports electronically. Under the bill, employer agents that are subject to this requirement and that fail to file their reports electronically may be assessed a penalty of \$25 for each employer whose report is not filed electronically.

Temporary reserve appeal tribunals

Currently, DWD employs individuals to serve as "appeal tribunals," who hear and decide appeals of initial determinations made by employees of DWD with respect to unemployment insurance matters. With limited exceptions, these individuals must be permanent employees of DWD. This bill permits DWD to employ an individual who formerly served as an appeal tribunal, and who retired from state service as a permanent employee, to serve as a temporary reserve appeal tribunal. The individual must be an attorney who is licensed to practice in this state. Currently, the rates of pay for limited term state employees are fixed under the state compensation plan. This bill provides that the compensation plan must include a

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provision specifying that, if an individual receives a limited term appointment as a temporary reserve appeal tribunal, DWD may compensate the individual at a rate not more than the base pay rate that the individual was paid at the time of his or her separation from DWD, plus any intervening adjustment made since that separation.

Treatment of employee leasing arrangements

Currently, an employer is generally liable for contributions (taxes) or benefit reimbursements based on an individual's employment if the individual is subject to the employer's control or direction over the performance of the individual's services. However, if an individual performs services for a client or customer of an employee service company under contract, the employee service company is liable for the contributions (taxes) or benefit reimbursements based on those services under certain specified conditions. This bill discontinues the existing category of "employee service company" and replaces it with two new categories called "professional employer organization" and "temporary help company." Under the bill, a professional employer organization or a temporary help company is treated as the employer of individuals who perform services for the entities with whom the organizations or companies contract under certain specified conditions. Professional employer organizations generally engage individuals on an ongoing basis to perform services for the entities with whom they contract, whereas temporary help companies engage individuals on a temporary basis to support or supplement the workforce of the entities with whom they contract.

Electronic submissions

Under current state law, unless otherwise provided, any document that may be submitted in writing to a state agency and that requires a signature may, with the consent of the agency, be submitted in electronic format. Federal law may also require or permit state agencies to accept certain documents electronically. This bill specifically permits DWD to provide a secure means of electronic interchange between itself and employing units, claimants, and other persons which, upon request to and with prior approval by DWD, may be used for departmental transmission or receipt of any document that is related to the administration of the unemployment insurance law in lieu of any other means of submission or receipt currently provided. The bill also provides that, if a due date is established by statute for the receipt of any document that is submitted electronically to DWD, then that submission is timely only if the document is submitted by midnight of that due date.

Liens for unpaid reimbursements and certain forfeitures

Currently, if an employer owes any contributions (taxes), interest, or fees to DWD, DWD has a lien on the employer's real and personal property located in this state at the time that DWD issues any initial determinations of liability, unless the lien is temporarily barred or stayed under bankruptcy or other insolvency law. This bill provides that DWD has a lien under the same conditions for any unpaid civil penalties imposed by DWD under the unemployment insurance law and for unpaid reimbursements of benefits payable by an employer that has elected to reimburse the unemployment reserve fund for benefits paid on its behalf instead of making contributions to the fund.

ASSEMBLY BILL 553***Administrative levies to collect certain liabilities***

Currently, a governmental or nonprofit employer is generally permitted to elect to finance benefit payments by reimbursing the unemployment reserve fund for the cost of benefits charged to its account rather than by paying regular contributions (taxes) to finance these benefits. If a reimbursement is not paid when due, DWD may collect the reimbursement by bringing a lawsuit against the debtor in circuit court. This bill permits DWD to administratively levy against any property other than realty of a person who fails to pay a reimbursement when due. Under the levy procedure, the person in possession of property that is subject to levy must surrender the property to DWD and DWD applies the property to offset the amount owed by the owner, plus the expenses of the levy.

Currently, DWD may proceed against any third party that has in its possession property that is subject to levy for payment of delinquent contributions or penalties administratively assessed by DWD, or for repayment of benefit overpayments. A third party is not liable for more than 25% of the debt owed by the original debtor. This bill permits DWD to use the levy procedure to recover property owed to DWD by third parties, subject to the current limitations, for unpaid contributions and penalties and benefit overpayments that have not been repaid, as well as for unpaid reimbursements.

The bill also permits DWD to administratively levy against the property of any person who fails to pay fees assessed by DWD under the unemployment insurance law.

Partial successorship

Currently, if at least 25% of a business is transferred from one employer to another employer and the transferee requests DWD to treat it as a successor to the transferor for purposes of unemployment insurance experience, including contribution and benefit liability, DWD must treat the transferee as a successor, instead of treating it as a new employer, under certain conditions. This bill precludes a transferee from requesting that it be treated as a successor to a transferor unless 100% of the transferor's business is transferred to a single transferee, except that the bill requires that a transferee be treated as a successor, under certain conditions, if 100% of the transferor's business is transferred to the transferee or if the transferor's unemployment insurance account is overdrawn on the date of the transfer.

Fraud detection and prosecution

This bill requires DWD to furnish annually to the council on unemployment insurance a report summarizing DWD's activities related to detection and prosecution of unemployment insurance fraud. Currently, no such report is required.

Funding and position changes

This bill authorizes 15.0 federally funded project positions for DWD to carry out unemployment insurance information technology system redesign projects. The bill also appropriates \$250,000 from revenue received by DWD for interest, penalties,

ASSEMBLY BILL 553

and fees for unemployment insurance purposes to be used to pay for employment service expenses that were disallowed as federally aided costs.

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For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

W > 9A →

1 ~~SECTION 1. 20.445 (1) (gh) (title) of the statutes is amended to read:~~

2 20.445 (1) (gh) (title) ~~Unemployment tax and accounting system~~ information
3 technology systems; assessments.

4 ~~SECTION 2. 20.445 (1) (nb) (title) of the statutes is amended to read:~~

5 20.445 (1) (nb) (title) ~~Unemployment tax and accounting system~~ information
6 technology systems; federal moneys.

7 ~~SECTION 3. 49.45 (10) of the statutes is amended to read:~~

8 49.45 (10) RULE-MAKING POWERS AND DUTIES. The department is authorized to
9 promulgate such rules as are consistent with its duties in administering medical
10 assistance. The department shall promulgate a rule defining the term "part-time
11 intermittent care" for the purpose of s. 49.46.

12 ~~SECTION 4. 108.02 (10m) of the statutes is amended to read:~~

13 108.02 (10m) EDUCATIONAL SERVICE AGENCY. "Educational service agency"
14 means a governmental entity or Indian tribal unit which is established and operated
15 exclusively for the purpose of providing services to one or more educational
16 institutions.

17 ~~SECTION 5. 108.02 (12m) (intro.) of the statutes is renumbered 108.02 (24m)~~
18 (intro.) and amended to read:

ASSEMBLY BILL 553

SECTION 74

1 transfers of businesses of which the department of workforce development receives
2 notice after January 31, 2002.

3 (9) The treatment of sections 108.17 (2) and (2c) and 108.22 (1) (b) of the
4 statutes first applies with respect to contributions payable for the first quarter of the
5 2003 calendar year.

6 (10) The treatment of section 108.22 (1m) of the statutes first applies with
7 respect to liabilities that accrue on the effective date of this subsection.

8 ~~(#) (11) The treatment of section 108.225 (1) (a) to (c) and (16) (intro) of the statutes~~
9 first applies with respect to determinations issued under section ~~108.10~~ ^{108.09} of the
10 statutes on the effective date of this subsection. ~~¶(1)~~

11 ~~SECTION 5. Effective dates.~~ This act takes effect on the first Sunday after
12 publication, except as follows:

13 ~~(1) The treatment of section 108.067 (1) of the statutes takes effect on April 1,~~
14 ~~2002.~~

15 ~~(2) The treatment of section 108.067 (2) of the statutes takes effect on January~~
16 ~~1, 2002.~~

17 (END)

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SENATE BILL 255

(taxes) of all employers that are subject to a requirement to pay contributions, unless the employee's employer or employers do not pay contributions, in which case the cost of benefits is generally chargeable to the employee's employer or employers.

Employee status

Currently, in order to be eligible to claim benefits, an individual must, in addition to other requirements, be an "employee" as defined in the unemployment insurance law. Generally, an "employee" is an individual who performs services for an employer in employment covered under the unemployment insurance law, whether or not the individual is directly paid by the employer. However, an individual is not an "employee" if the individual performs services as an independent contractor.

performing services for an employer other than a governmental or nonprofit employer
This bill provides instead, that during the four-year period beginning in the year 2000 (the specific date varies in different situations), an independent contractor other than a logger or trucker as currently provided must meet at least seven of ten conditions concerning the individual's relationship to or control over his or her business or the services that he or she performs. Two of the conditions that an individual may use to qualify as an independent contractor require the individual to have a federal employer identification number or to have filed business or self-employment income tax returns with the federal internal revenue service based on the services performed as an independent contractor. The other eight conditions are the same eight conditions that an individual may use to qualify as an independent contractor under current law.

Beginning in 2004 in order
~~Except in the case of a logger or trucker performing services for an employer other than a governmental or nonprofit employer,~~ to be considered an independent contractor, an individual must hold or have applied for an employer identification number with the federal internal revenue service or must have filed business or self-employment income tax returns with the federal internal revenue service in the previous year, and must meet at least six of eight other conditions concerning the individual's relationship to or direction or control over his or her business or the services that he or she performs.

This bill makes permanent the current test for determination of "employee" status.

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INS 2B:

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Approved training

Currently, benefits may not be denied to an otherwise eligible claimant because the claimant is enrolled in a vocational training course under certain conditions. This bill provides that this exception does not apply to a claimant who fails to provide to DWD with his or her social security number or who provides a false social security number. Current law also provides that a claimant is not subject to certain requirements to requalify for benefits by obtaining new work after voluntarily terminating work or failing, without good cause, to accept suitable work or recall to work for a former employer if the failure occurs as a result of participation in a federal training program or the claimant leaves work to enter or continue in such a program. This bill provides that this exception does not apply to a claimant who fails to provide a social security number or who provides a false social security number. However, the bill extends the current exemption so that a claimant who participates in such a program is not subject to requirements to be able to work and remain available for work, and makes such a claimant exempt from disqualifications or benefit reductions for taking a voluntary leave of absence from work, working in self-employment, failing to maintain a license, employment by a family-owned business, or failure to provide certain information. However, the bill limits the current exemption so that it applies only to dislocated workers and workers obtaining training under the federal trade adjustment assistance act, rather than all workers, who participate in certain federal training programs.

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Recovery of benefit overpayments

Currently, DWD may offset any benefits that are overpaid to a claimant against benefits that the claimant would otherwise be eligible to receive. This bill provides for DWD to recoup any overpayment instead of offsetting it. The change facilitates collection of overpayments during bankruptcy proceedings.

INS 4A:

Duration of levies

Currently, DWD may administratively levy against the property of a 3rd party who holds the property of a person who is indebted to DWD for the purpose of enforcing collection of the debt. No levy applies for more than one year after the date of service. This bill removes that limitation. Under the bill, a levy is effective until the debt is satisfied or until DWD releases the levy, whichever occurs first.

third

Enforcement of assessments against imposters

Currently, if any person makes a false statement or representation in order to obtain benefits in the name of another person, DWD may, by administrative action

or by decision in an administrative proceeding, require the person to repay the benefits and may also penalize the person by levying an assessment against him or her in an amount not greater than 50% of the benefits wrongfully obtained. The assessment may be enforced by obtaining a judgment against the person in court and then by levying against the nonexempt property of the person to enforce the judgment. This bill provides, in addition, that DWD may offset the amount due against other benefits that the person would otherwise be eligible to receive or may issue an administrative levy against the property of the person without a court proceeding. ✓

INS 5A:

Treatment of step children

Currently, step children are not treated as children for purposes of the unemployment insurance law. This bill treats step children as children for that purpose. Among other effects, the change means that: a) unless an employer otherwise elects, with the approval of DWD, the wages of the step children of a nonresident alien who has nonimmigrant status are not subject to contribution requirements (taxes) and these step children may not claim benefits based on their employment; b) ownership of a business by the step child of a claimant may result in a limitation of benefit availability based on employment with that business; c) the need to obtain child care for a step child or domestic abuse involving a step child may serve to permit a claimant to obtain benefits after voluntarily terminating work without requalifying by engaging in new work under certain conditions; and d) ownership of a business by a step child of another owner may result in treatment of the business as the successor of the previous business rather than treatment of the business as a new business under certain conditions.

Late appeals

department
Currently, if a party in an unemployment insurance determination files an appeal that is not timely, DWD may schedule a hearing concerning whether the party's failure to file the appeal on a timely basis was for a reason that was beyond the party's control. This bill provides that if a party files an appeal that is not timely, an appeal tribunal (attorney employed by DWD) must review the reasons given by the party for not filing a timely appeal and if those reasons, taken as true and construed most favorably to the party, do not constitute a reason that was beyond the party's control, the tribunal may dismiss the appeal without a hearing and issue a decision finding that the appeal was not filed on a timely basis. If the tribunal finds that the appeal may have been filed late for a reason that was beyond the party's control, the tribunal may schedule a hearing on that issue.

Reporting of social security benefit information

Currently, claimants and their employers and retirement systems are required to report information to DWD any information specified by DWD relating to the portion of social security benefits received by a claimant that is not based upon taxes

paid by a claimant. This bill makes the reporting requirement applicable to all social security benefits received. ✓

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INS 9A:

X

SECTION 1. 108.02 (6m) of the statutes is created to read: X

108.02 (6m) CHILD. "Child" means a natural ^{child} adopted ^{child} or step ^{child} child.

SECTION 2. 108.02 (12) (b) (intro.) of the statutes is amended to read:

108.02 (12) (b) (intro.) During the period beginning on January 1, 1996, and ending on December 31, 1999, ~~and during the period beginning on January 1, 2004,~~ with respect to contribution requirements, and during the period beginning on January 1, 1996, and ending on April 1, 2000, ~~and during the period beginning on April 4, 2004,~~ with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that:

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105.

SECTION 3. 108.02 (12) (bm) (intro.) of the statutes is amended to read:

108.02 (12) (bm) (intro.) During the 4-year period beginning on January 1, 2000, with respect to contribution requirements, and during the period beginning on April 2, 2000, ~~and ending on April 3, 2004,~~ with respect to benefit eligibility, par. (a) does not apply to an individual performing services for an employing unit other than a government unit or nonprofit organization in a capacity other than as a logger or trucker, if the employing unit satisfies the department that the individual meets 7 or more of the following conditions by contract and in fact:

History: 1971 c. 53; 1971 c. 213 s. 5; 1973 c. 247; 1975 c. 223, 343; 1975 c. 373 s. 40; 1977 c. 29, 133; 1979 c. 52, 221; 1981 c. 36, 353; 1983 a. 8 ss. 4 to 12, 54; 1983 a. 168; 1983 a. 189 ss. 158 to 161, 329 (25), (28); 1983 a. 384, 477, 538; 1985 a. 17, 29, 332; 1987 a. 38 ss. 6 to 22, 134; 1987 a. 255; 1989 a. 31; 1989 a. 56 ss. 151, 259; 1989 a. 77, 303; 1991 a. 89; 1993 a. 112, 213, 373, 492; 1995 a. 27 ss. 3777, 9130 (4); 1995 a. 118, 225; 1997 a. 3, 27, 39; 1999 a. 15, 82, 83; 2001 a. 35, 103, 105.

SECTION 4. 108.04 (11) (cm) of the statutes is amended to read:

108.04 (11) (cm) ~~Any~~ If any person who makes a false statement or representation in order to obtain benefits in the name of another person, the benefits received by that person constitute a benefit overpayment. Such person may, by a determination or decision issued under s. 108.095, be required to repay the amount of the benefits obtained and be assessed an administrative assessment in an additional amount equal to not more than 50% of the amount of benefits obtained.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

SECTION 5. 108.04 (16) (a) (intro.), (b) and (c) of the statutes are amended to read:

108.04 (16) (a) (intro.) Benefits shall not be reduced under sub. (1) (a), or denied under sub. (2) (a) or (d) or (8) or s. 108.141 (3g) to any otherwise eligible individual for any week because the individual is enrolled in a full-time course of vocational training or basic education which is a prerequisite to such training, provided it is determined that:

(b) The requalifying ~~employment~~ requirement under subs. (7) and (8) and the general qualifying requirements under sub- subs. (1) and (2) (a) and (d) do not apply to an individual as a result of the individual's enrollment in training or leaving unsuitable work to enter or continue training in accordance with the plan of any state under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822.

(c) Benefits may not be denied to an otherwise eligible individual under par. (a) who is enrolled in a program under the plan of any state for training under 19 USC 2296 or a plan for training of dislocated workers approved under 29 USC 2822,

notwithstanding the failure of such training to meet any of the requirements of par.

(a) 1. to 4.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

SECTION 6. 108.04 (17) (a) 1. and 2., (b) 1. and 2., (c) 1. and 2., (d), (e), (f), (g),

(h), (i) and (k) (intro.) of the statutes are amended to read:

108.04 (17) (a) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for ~~an~~ any educational institution in the first such year or term and if there is reasonable assurance that he or she will perform such services for an educational institution in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for ~~an~~ any educational institution in the first such term and if there is reasonable assurance that he or she will perform such services for an educational institution in the 2nd such term.

(b) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for any such a government unit, Indian tribe, or nonprofit organization in the first such year or term and if there is reasonable assurance that he or she will perform such services for such a government unit, Indian tribe, or nonprofit organization in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for any such a government unit, Indian tribe, or nonprofit organization in the first such term and

if there is reasonable assurance that he or she will perform such services for such a government unit, Indian tribe, or nonprofit organization in the 2nd such term.

(c) 1. During the period between 2 successive academic years or terms, if the school year employee performed such services for ~~an~~ any educational service agency in the first such year or term and if there is reasonable assurance that he or she will perform such services for an educational service agency in the 2nd such year or term; or

2. During the period between 2 regular but not successive academic terms, when an agreement between an employer and a school year employee provides for such a period, if the school year employee performed such services for ~~an~~ any educational service agency in the first such term and if there is reasonable assurance that he or she will perform such services for an educational service agency in the 2nd such term.

(d) A school year employee of an educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for an educational institution in the first such year or term and there is reasonable assurance that he or she will perform such services for ~~an~~ any educational institution in the 2nd such year or term.

(e) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution who performs services other than in an instructional, research or principal administrative capacity is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years

or terms if the school year employee performed such services for such a government unit or nonprofit organization in the first such year or term and there is reasonable assurance that he or she will perform such services for any such a government unit, Indian tribe, or nonprofit organization in the 2nd such year or term.

(f) A school year employee of an educational service agency who performs services other than in an instructional, research or principal administrative capacity, and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during a period between 2 successive academic years or terms if the school year employee performed such services for an educational service agency in the first such year or term and there is reasonable assurance that he or she will perform such services for ~~an~~ any educational service agency in the 2nd such year or term.

(g) A school year employee of an educational institution who performs services as described in par. (a) or (d) is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for an educational institution in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that he or she will perform the services described in par. (a) or (d) for ~~an~~ any educational institution in the period immediately following the vacation period or holiday recess.

(h) A school year employee of a government unit, Indian tribe, or nonprofit organization which provides services to or on behalf of an educational institution who performs the services described in par. (b) or (e) is ineligible for benefits based on such services for any week of unemployment which occurs during an established

and customary vacation period or holiday recess if the school year employee performed such services for such a government unit, Indian tribe, or nonprofit organization in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (b) or (e) for any such a government unit, Indian tribe, or nonprofit organization in the period immediately following the vacation period or holiday recess.

(i) A school year employee of an educational service agency who performs the services described in par. (c) or (f), and who provides such services in an educational institution or to or on behalf of an educational institution, is ineligible for benefits based on such services for any week of unemployment which occurs during an established and customary vacation period or holiday recess if the school year employee performed such services for ~~an~~^{plain space} any educational service agency in the period immediately before the vacation period or holiday recess, and there is reasonable assurance that the school year employee will perform the services described in par. (c) or (f) for an educational service agency in the period immediately following the vacation period or holiday recess.

(k) (intro.) If benefits are reduced or denied to a school year employee who performed services other than in an instructional, research or principal administrative capacity under pars. (d) to (f), and the department later determines that the school year employee was not offered an opportunity to perform such services for ~~the~~ an applicable employer under pars. (d) to (f) in the 2nd academic year or term, the department shall recompute the school year employee's base period wages under sub. (4) (a) and ss. 108.05 (1) and 108.06 (1) and shall make retroactive

payment of benefits for each week of such reduction or denial if the school year employee:

SECTION 7. 108.05 (7) (a) 1. of the statutes is amended to read:

108.05 (7) (a) 1. "Pension payment" means a pension, retirement, annuity, or other similar payment made to a claimant, based on the previous work of that claimant, whether or not payable on a periodic basis, from a governmental or other retirement system maintained or contributed to by an employer from which that claimant has base period wages, other than a payment received under the federal Social Security Act (42 USC 301 et seq.) that is based in whole or in part upon taxes paid by the claimant.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105.

History: 1971 c. 40, 42, 53, 211; 1973 c. 247; 1975 c. 24, 343; 1977 c. 127, 133, 286, 418; 1979 c. 52, 176; 1981 c. 28, 36, 315, 391; 1983 a. 8, 27, 99, 168; 1983 a. 189 s. 329 (28); 1983 a. 337, 384, 468, 538; 1985 a. 17, 29, 40; 1987 a. 38 ss. 23 to 59, 107, 136; 1987 a. 255, 287, 403; 1989 a. 77; 1991 a. 89; 1993 a. 112, 122, 373, 492; 1995 a. 118, 417, 448; 1997 a. 35, 39; 1999 a. 9, 15, 83; 2001 a. 35.

SECTION 8. 108.05 (7) (c) of the statutes is amended to read:

108.05 (7) (c) *Required benefit reduction.* If Except as provided in par. (cm), if a claimant actually or constructively receives a pension payment, the department shall reduce benefits otherwise payable to the claimant for a week of partial or total unemployment, but not below zero, if pars. (d) and (e) or if pars. (d) and (f) apply.

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105.

SECTION 9. 108.05 (7) (cm) of the statutes is created to read:

108.05 (7) (cm) *Payments received under Social Security Act.* If a claimant receives a pension payment under the federal Social Security Act (42 USC 301 et seq.), the department shall not reduce the benefits otherwise payable to the claimant resulting from the claimant's receipt of the portion of the pension payment that is based upon taxes paid by the claimant.

SECTION 10. 108.05 (7) (d) 1. (intro.) of the statutes is amended to read:

✓
108.05 (7) (d) 1. (intro.) If a pension payment to which par. (c) applies is not paid on a weekly basis, the department shall allocate and attribute the payment to specific weeks if:

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105.

SECTION 11. 108.05 (7) (f) (intro.) of the statutes is amended to read:

108.05 (7) (f) *Partial or total employee funding.* (intro.) If any portion of a pension payment to which par. (c) applies ^{and} that is actually or constructively received by a claimant under this subsection is funded by the claimant's contributions, the department shall compute the benefits payable for a week of partial or total unemployment as follows:

History: 1971 c. 53; 1973 c. 247; 1975 c. 343; 1977 c. 29; 1979 c. 52; 1981 c. 28, 36; 1983 a. 8, 168, 384; 1985 a. 17, 40; 1987 a. 38 ss. 60 to 66, 136; 1987 a. 255; 1989 a. 77; 1991 a. 89; 1993 a. 373; 1995 a. 118; 1997 a. 39; 1999 a. 15, 56, 185, 186; 2001 a. 35, 43, 105.

SECTION 12. 108.09 (4) (c) of the statutes is amended to read:

X
108.09 (4) (c) *Late appeal.* If a party files an appeal which is not timely, an appeal tribunal shall review the appellant's written reasons for filing the late appeal. If those reasons, when taken as true and construed most favorably to the appellant, do not constitute a reason beyond the appellant's control, the appeal tribunal may dismiss the appeal without a hearing and issue a decision accordingly. Otherwise, the department may schedule a hearing concerning the issue question of whether the ~~party's failure to timely file the appeal was~~ filed late for a reason that was beyond the ~~party's~~ appellant's control. The department may also provisionally schedule a hearing concerning any matter in the determination. ~~If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file the appeal was not for a reason beyond the party's control, the appeal tribunal shall issue a decision containing this finding and dismissing the appeal. If, after hearing testimony, the appeal tribunal finds that the party's failure to timely file an appeal was for a reason~~

~~beyond the party's control, the appeal tribunal shall issue a decision containing this finding. The being appealed. After hearing testimony on the late appeal question, the appeal tribunal shall issue a decision which makes ultimate findings of fact and conclusions of law concerning whether the the appellant's appeal was filed late for a reason that was beyond the appellant's control and which, in accordance with those findings and conclusions, either dismisses the appeal or determines that the appeal was filed late for a reason that was beyond the appellant's control. If the appeal is not dismissed, the same or another appeal tribunal established by the department for this purpose, after conducting a hearing, shall then issue a decision under sub.~~
(3) (b) ~~after conducting a hearing~~ ^{PLAIN SPACE} concerning any matter in the determination.

History: 1971 c. 147; 1973 c. 247; 1975 c. 343; 1977 c. 29, 418; 1979 c. 52, 221; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38 ss. 81 to 86, 136; 1989 a. 56 s. 259; 1989 a. 77; 1991 a. 89, 269; 1993 a. 373; 1995 a. 118; 1997 a. 35, 39; 1999 a. 15; 2001 a. 35.

SECTION 13. 108.14 (8s) (a) and (b) of the statutes are amended to read:

108.14 (8s) (a) Overpayments of unemployment insurance benefits as determined under this chapter may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under the unemployment insurance law of another state, and overpayments of unemployment insurance benefits as determined under the unemployment insurance law of that other state may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under this chapter; and

History: 1971 c. 53; 1973 c. 90 s. 559; 1973 c. 247; 1975 c. 343; 1977 c. 29, 133; 1977 c. 196 s. 131; 1977 c. 272 s. 98; 1979 c. 34 s. 2102 (25) (a); 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 36 ss. 18, 45; 1983 a. 8 s. 54; 1983 a. 189 s. 329 (28); 1983 a. 388; 1985 a. 17; 1985 a. 29 ss. 1664 to 1668, 3202 (29); 1985 a. 332; 1987 a. 38, 255; 1989 a. 77, 139, 303, 359; 1991 a. 89; 1993 a. 373, 490, 492; 1995 a. 27, 118, 225; 1997 a. 39; 1999 a. 83; 2001 a. 35, 105.

(b) Overpayments of unemployment insurance benefits as determined under applicable federal law, with respect to benefits or allowances for unemployment provided under a federal program administered by this state under an agreement with the U.S. secretary of labor, may be ~~recovered by offset~~ recouped from unemployment insurance benefits otherwise payable under that program, or under

the unemployment insurance law of this state or of another state or any such federal unemployment benefit or allowance program administered by the other state under an agreement with the U.S. secretary of labor if the other state has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503 (g) (2), if the United States agrees, as provided in the reciprocal agreement with this state entered into under 42 USC 503 (g) (2), that overpayments of unemployment insurance benefits as determined under this chapter, and overpayments as determined under the unemployment insurance law of another state which has in effect a reciprocal agreement with the U.S. secretary of labor as authorized by 42 USC 503 (g) (2), may be ~~recovered by offset~~ recouped from benefits or allowances for unemployment otherwise payable under a federal program administered by this state or the other state under an agreement with the U.S. secretary of labor.

History: 1971 c. 53; 1973 c. 90 s. 559; 1973 c. 247; 1975 c. 343; 1977 c. 29, 133; 1977 c. 196 s. 131; 1977 c. 272 s. 98; 1979 c. 34 s. 2102 (25) (a); 1979 c. 110 s. 60 (11); 1979 c. 221; 1981 c. 36 ss. 18, 45; 1983 a. 8 s. 54; 1983 a. 189 s. 329 (28); 1983 a. 388; 1985 a. 17; 1985 a. 29 ss. 1664 to 1668, 3202 (29); 1985 a. 332; 1987 a. 38, 255; 1989 a. 77, 139, 303, 359; 1991 a. 89; 1993 a. 373, 490, 492; 1995 a. 27, 118, 225; 1997 a. 39; 1999 a. 83; 2001 a. 35, 105.

SECTION 14. 108.22 (8) (b) of the statutes is amended to read:

108.22 (8) (b) To recover any overpayment which is not otherwise repaid or recovery of which has not been waived, the department may ~~offset~~ recoup the amount of the overpayment ~~against~~ from benefits the individual would otherwise be eligible to receive, or file a warrant against the liable individual in the same manner as is provided in this section for collecting delinquent payments from employers, or both, but only to the extent of recovering the actual amount of the overpayment and any costs and disbursements, without interest.

History: 1973 c. 247; Sup. Ct. Order, 67 Wis. 2d 585, 774 (1975); 1975 c. 343; 1979 c. 52; 1981 c. 36; 1985 a. 17, 29; 1987 a. 38; 1989 a. 77; 1991 a. 89; 1993 a. 112, 373; 1995 a. 224; 1997 a. 39; 1999 a. 15; 2001 a. 35.

SECTION 15. 108.225 (15) of the statutes is amended to read:

108.225 (15) DURATION OF LEVY. A levy is effective from the date on which the levy is first served on the 3rd party until the liability out of which the levy arose is

satisfied, or until the levy is released ~~or until one year from the date of service,~~
whichever occurs first. ✓

History: 1989 a. 77; 1997 a. 187, 283; 2001 a. 35, 109.

INS 64A:

Ⓢ The treatment of sections 108.04 (16) (a) (intro.), (b) and (c) of the statutes
first applies with respect to weeks of unemployment beginning on the effective date
of this subsection. ✓

Ⓢ The treatment of section 108.09 (4) (c) of the statutes first applies with
respect to determinations issued under sections 108.09, 108.095 and 108.10 of the
statutes on December 29, 2003. ✓

IN64B:

Ⓢ The treatment of section 108.225 (15) of the statutes first applies with
respect to levies issued on the effective date of this subsection. ✓

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3121/P1dn

JTK:Y:...

[Handwritten signature]
cjs

Tom Smith:

→ . With the deletion of the sunset provisions in s. 108.02 (12) (b) (intro.) and (bm) (intro.), stats., by this draft, is it still necessary to retain s. 108.02 (12) (b) stats.?

→ . Concerning collection of administrative assessments imposed upon imposters by administrative levy, in my view, all that is necessary is to provide that the benefits that are improperly paid constitute an overpayment. See the treatment of s. 108.04 (11) (cm), stats. Once we have an overpayment, all of the machinery is already in place to collect the overpayment by administrative levy. As you know, there are also other methods of collecting overpayments, and under the draft, these methods could also be used to collect an administrative assessment against an imposter. Under s. 108.04 (11) (cm), stats., the process for determining an overpayment is the same process that is used under s. 108.09 (5), stats., for benefit determinations and appeals. References to s. 108.09, stats. include s. 108.09 (5), stats., so no separate mention of s. 108.09 (5) is required. Also, in my mind, the animal that we have here is an administrative assessment. The penalty would be the specific dollar amount that is assessed.

→ . Concerning the revision of s. 108.04 (17), stats., relating to educational employees, I do not see any substantive difference between the current and proposed language. However, in s. 108.04 (17) (k) (intro.), stats., I noted an existing reference to "the employer" which seems at odds with the existing and proposed language. This draft therefore attempts to clarify that reference.

→ . Concerning the changes to s. 108.05 (7), stats., relating to offset of certain pension payments, this draft essentially substitutes an awkward draft for a much cleaner one without substantive change, as far as I can tell. I did not think that the submitted "Magic Words" language was sufficiently precise to do the job so I have taken another stab at it. In addition, by amending the key language out of the definition of "pension payment" in s. 108.05 (7) (a) 1., stats., the draft affects a number of provisions of s. 108.05 (7) by including employee-financed portions of social security benefits where they are currently excluded: see pars. (a) 2., (b), (c), (d), (e), (f), (g) and (h). As drafted, this actually makes a substantive change in s. 108.05 (7) (b), stats., by potentially requiring the full amount of all social security benefits to be reported by claimants, employers, and retirement systems, instead of only the employer-funded portion that is subject to offset. If you do not want this change, we can amend s. 108.05 (7) (b), stats., to preserve the status quo.

*LPS: please
number
these items*

. Concerning late appeals under s. 108.09 (4) (c), stats., this draft provides that if the appeal tribunal, without a hearing, finds that the appeal may have been filed late for a reason that was beyond the appellant's control, the department *may* then schedule a hearing on that issue. Would it ever be proper under this circumstance not to schedule a hearing? ✓

. Concerning recovery of benefit overpayments, please look at the treatment of s. 108.14 (8s) (a) and (b), stats., by this draft. Is a parallel change appropriate for interstate and federal government benefits? Also, s. 108.05 (10) (b), stats., seems to preclude recovery of an overpayment if any forfeiture assessed under s. 108.04 (11), stats., has not first been collected. If the claimant is in bankruptcy, should the recoupment proposed by this draft in s. 108.22 (8) (b), stats., have precedence over the recovery of forfeitures? ✓

. Concerning the treatment of step ^{ten} children, no initial applicability was specified in the instructions. However, since this change makes a substantive difference in the treatment of certain situations that could be in mid course on the day that the bill resulting from this draft becomes law, some initial applicability provisions may be required. There are potentially 10 separate initial applicability provisions that may be needed to phase in this change, although I suspect that some situations would have the same initial applicability. The affected provisions of the statutes (excluding provisions resulting from the change in the definition of "employment") are: sections 108.02 (15) (j) 6. and (15m) (a), 108.04 (1) (g) 1., 1L, and 2. and (gm) (intro.) and 4.c., and (7) (cm), (r) and (s) 1. a., 108.16 (8) (e) 1., 108.22 (9) and 108.225 (1) (d) and (16) (a). ✓ s.s.

. Section 108.225 (12), stats., provides that notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy. I assumed that this limitation upon notice is not necessarily tied to the one-year levy expiration in s. 108.225 (15), stats., which this draft removes. Therefore, I did not treat s. 108.225 (12), stats. If this assumption is not accurate, please let me know. ✓

Jeffery T. Kuesel
Managing Attorney
Phone: (608) 266-6778

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-3121/P1dn
JTK:cjs:pg

August 27, 2003

Tom Smith:

1. With the deletion of the sunset provisions in s. 108.02 (12) (b) (intro.) and (bm) (intro.), stats., by this draft, is it still necessary to retain s. 108.02 (12) (b), stats.?
2. Concerning collection of administrative assessments imposed upon imposters by administrative levy, in my view, all that is necessary is to provide that the benefits that are improperly paid constitute an overpayment. See the treatment of s. 108.04 (11) (cm), stats. Once we have an overpayment, all of the machinery is already in place to collect the overpayment by administrative levy. As you know, there are also other methods of collecting overpayments, and, under the draft, these methods could also be used to collect an administrative assessment against an imposter. Under s. 108.04 (11) (cm), stats., the process for determining an overpayment is the same process that is used under s. 108.09 (5), stats., for benefit determinations and appeals. References to s. 108.09, stats. include s. 108.09 (5), stats., so no separate mention of s. 108.09 (5) is required. Also, in my mind, the animal that we have here is an administrative assessment. The penalty would be the specific dollar amount that is assessed.
3. Concerning the revision of s. 108.04 (17), stats., relating to educational employees, I do not see any substantive difference between the current and proposed language. However, in s. 108.04 (17) (k) (intro.), stats., I noted an existing reference to "*the employer*" which seems at odds with the existing and proposed language. This draft therefore attempts to clarify that reference.
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8. Section 108.225 (12), stats., provides that notice prior to levy is not required for a subsequent levy on any debt of the same debtor within one year of the date of service of the original levy. I assumed that this limitation upon notice is not necessarily tied to the one-year levy expiration in s. 108.225 (15), stats., which this draft removes. Therefore, I did not treat s. 108.225 (12), stats. If this assumption is not accurate, please let me know.

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